

ORDERED.

Dated: August 16, 2016



Roberta A. Colton
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Patchiammal Benjamin)	Case No. 6:16-bk-00994-RAC
<i>aka</i> Pachi Benjamin,)	Chapter 7
)	
Debtor.)	

**ORDER VACATING ORDER DISMISSING APPEAL,
DIRECTING PAYMENT OF FILING FEE, AND
DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL**

THIS CASE comes before the Court on the Court's own initiative, and upon Debtor's Emergency Motion for Stay Pending Appeal (the "Emergency Motion"). [Doc. No. 47]. An order dismissing appeal, as untimely, was entered on August 9, 2016 ("Dismissal Order"). The Dismissal Order was entered in error and should be vacated. Nevertheless, Debtor, upon filing the notice of appeal, failed to pay the required fee or request a waiver of the fee. The fee remains due and immediately payable.

Debtor's Emergency Motion seeks a stay pending his appeal of this Court's orders granting Wells Fargo Bank's motion for relief from the stay and denying Debtor's motion for reconsideration of the same. The Court explained to the Debtor at the hearing on his motion for

reconsideration that it was denying the motion as moot, as, due to his prior bankruptcy filing (Case No. 6:15-bk-07714-CCJ, filed 09/09/2015 and dismissed 10/06/2015),¹ the automatic stay in this case expired 30 days after the petition was filed. *See* 11 U.S.C. § 362(c)(3).² The Court further explained that as Debtor had not moved to extend the stay, the stay had not been in effect since March, approximately four months prior. Given that the stay terminated automatically by operation of section 362(c)(3), the Court finds no emergency or proper basis to impose a stay pending appeal. Accordingly, it is

ORDERED:

1. The Order Dismissing Appeal appearing at Doc. No. 44 is **VACATED**.
2. Debtor shall pay the required filing fee or file a request for waiver of the fee by not later than Tuesday, August 23, 2016. Failure to comply with the terms of this Order will result in the dismissal of the appeal.
3. Debtor's Emergency Motion is **DENIED**.

The Clerk is directed to serve a copy of this order on interested parties who are non-CM/ECF users.

¹ Debtor also filed another prior case, Case No. 6:14-bk-08978-CCJ, which was filed 08/05/2014 and dismissed 08/21/2014. Had that case also been pending within the year proceeding the petition, section 362(c)(4) would govern, and the automatic stay would not have come into effect at all upon the filing of this case.

² The Court noted that Wells Fargo Bank's motion for relief was technically unnecessary, as the motion was filed almost 60 days after the commencement of the case.